

Agency for International Development

§ 228.16

(4) Employ citizens or lawful permanent residents (or equivalent immigration status to live and work on a continuing basis) of a country in Code 937 (or other principal geographic procurement code designated in an implementing instrument), in more than half its permanent full-time positions and more than half of its principal management positions.

§ 228.13 Foreign government-controlled organizations.

Firms operated as commercial companies or other organizations or enterprises (including nonprofit organizations) in which foreign governments or their agents or agencies have a controlling interest are not eligible as suppliers of commodities and services, except if their eligibility has been established by a waiver approved by USAID in accordance with the provisions set forth in subpart D of this part. Government ministries or agencies of the cooperating/recipient country, including those at the regional and local levels, and government educational institutions, health care providers, and other technical entities of the cooperating/recipient country not formed primarily for commercial or business purposes, are eligible as suppliers of commodities and services.

§ 228.14 Construction procurement with foreign-owned local firms.

(a) When the estimated cost of a contract for construction is \$10 million or less and only local firms will be solicited, a local corporation or partnership which is a foreign-owned (owned or controlling interest by individuals not citizens or permanent residents, or equivalent immigration status, of the United States or the cooperating/recipient country) local firm will be eligible if it is determined by USAID to be an integral part of the local economy, see paragraph (b) of this section. However, such a determination is contingent on first ascertaining that no United States construction company with the required capability is currently operating in the cooperating/recipient country or, if there is such a company, that it is not interested in bidding for the proposed contract.

(b) A foreign-owned local firm is an integral part of the local economy provided:

(1) It has done business in the cooperating/recipient country on a continuing basis for at least three years prior to the issuance date of invitations for bids or requests for proposals to be financed by USAID;

(2) It has a demonstrated capability to undertake the proposed activity;

(3) All, or substantially all, of its directors of local operations, senior staff and operating personnel are lawfully resident (or equivalent immigration status to live and work on a continuing basis) in the cooperating/recipient country; and

(4) Most of its operating equipment and physical plant are in the cooperating/recipient country.

§ 228.15 Nationality of employees and individuals under contracts or subcontracts for services.

The rules set forth in §§ 228.10 through 228.13 of this part do not apply to the employees of contractors, or individuals providing technical or professional services to recipients or contractors. However, such individuals must not be citizens or lawful permanent residents (or equivalent immigration status) of countries which are prohibited sources.

§ 228.16 Miscellaneous service transactions.

This section governs certain miscellaneous services.

(a) *Commissions.* The nationality rules of this part do not apply to the payment of commissions by suppliers.

(b) *Bonds and guarantees.* The nationality rules of this part do not apply to sureties, insurance companies or banks who issue bonds or guarantees under USAID-financed contracts.

(c) *Liability insurance under construction contracts.* The nationality rules of this part do not apply to firms providing liability insurance under construction contracts.